

# FILED

August 12, 2004

NEW JERSEY STATE BOARD  
OF MEDICAL EXAMINERS

STATE OF NEW JERSEY  
DEPARTMENT OF LAW & PUBLIC SAFETY  
DIVISION OF CONSUMER AFFAIRS  
STATE BOARD OF MEDICAL EXAMINERS  
DOCKET NO. BDS 7226-03

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In the Matter of:

FRANK NOONAN, M.D.

FINAL ORDER

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This matter **was** returned to the State Board of Medical Examiners from *the* Office of Administrative Law upon the entry of an **Initial Decision** by Administrative Law Judge Barry N. Frank dated May 10, 2004. Within said **decision**, ALJ Frank recommended that the license of respondent Frank **Noonan**, M.D. to practice medicine and surgery in the State of New Jersey be revoked and further recommended that costs and **penalties**, to be set by the Board, **be** assessed against respondent.

ALJ **Frank recounts** in his Initial Decision that the hearing before the Office of Administrative Law **proceeded ex parte because**, on the date of the scheduled hearing, respondent through his counsel gave notice that no one would appear on respondent's **behalf**. At the **ex parte** proceeding, documents to include fourteen patient medical records, a transcript of respondent's sworn testimony before the Preliminary Evaluation Committee on April 26, 2000 and an expert report *from* Paula Krauzer, M.D., were accepted into evidence (see appendix to Initial Decision listing exhibits in

CERTIFIED TRUE COPY

evidence). Based on **review** of the exhibits in **evidence**, ALJ Frank made extensive findings of fact concerning **respondent's** conduct when providing treatment to 'fourteen **patients**.'

ALJ Frank **sustained** all charges made **by** the Attorney General, to include **charges** that respondent improperly treated patients, ignored said **patients'** symptoms, **failed** to maintain adequate medical **records** pertaining to said **patients**, prescribed **inappropriate** and in some instances contraindicated medications for **said** patients, and falsified **letters** on behalf of **certain** patients so as to mislead their employers. ALJ Frank concluded that the **evidence** presented provided "overwhelming proof of respondent's

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It appears, based on the findings set forth, that independent findings were made regarding Dr. Noonan's care of fourteen **patients**, notwithstanding ALJ Frank's reference in his opinion to there being thirteen patients (at page 16 of the Initial Decision). It thus **appears** that independent **findings** are set forth: (1) regarding patient C.A. at paragraphs 4-15 of the initial decision; (2) regarding patient C.U. at paragraphs 16-22; (3) regarding patient D.R. at **paragraphs** 23-31; (4) regarding patient I.R. at paragraphs 32-36; (5) regarding patient J.W. at paragraphs 37-57; (6) regarding patient E.A. at paragraphs 58-62; (7) regarding patient V.D. at paragraphs 63-72; (8) regarding patient C.A. at paragraphs 73-77; (9) regarding patient B.H. at paragraphs 78-81; (10) regarding patient D.C. at paragraphs 82-84; (11) regarding patient G.U. at paragraphs 85-88; (12) regarding patient J.S. at paragraphs 89-92; (13) regarding patient D.D. at paragraphs 93-98; and (14) regarding patient H.Z. at paragraphs 99-103 (the two C.A.'s referenced above at paragraphs (1) and (8) are different **patients**). ALJ Frank **additionally** found that Dr. Noonan regularly **permitted** others to **write** in patient records he **maintained** (paragraph 104) and that Dr. Noonan's general pattern of record keeping did not meet the board's record-keeping requirements (paragraph 105).

violation **of** the statutes and regulations **governing** the practice of medicine in the State of New Jersey.”

Following entry of the Initial Decision, the Attorney General, **by** Deputy Attorney **General** Hakima Bey, submitted a letter brief dated June 2, 2004 and four certifications detailing the costs incurred in the prosecution of this **matter**. Respondent did not submit any exceptions to ALJ Frank’s decision, nor did he appear **or** participate in any manner after the matter **was** returned to the Board.

Having reviewed the record **of** this matter **on** June 9, 2004, we fully concur with all findings of fact and conclusions of law made by ALJ Frank. We thus are fully in accord with ALJ Frank’s conclusion that:

The evidence presented at the *ex parte* hearing and the exhibits describing the case histories **of** individual patients **involved** demonstrate by a preponderance of credible evidence that Dr. Noonan’s gross negligence, deficient medical knowledge and/or disregard for appropriate **standards of** care, and complete disregard for the Board’s regulations regarding **patient** record keeping was rampant and well below the standard of **care** expected of a licensed physician practicing medicine and surgery in the State of New Jersey.

...

The evidence presented at the hearing in this matter as *set* forth in the findings of fact has clearly demonstrated that the respondent, Dr. Frank Noonan, took part in gross repeated acts of negligence, malpractice and incompetence in his care and treatment of the numerous patients outlined in said statements of fact, endangering their lives, health and safety ...

[Initial, Decision, 13-14]

We find cause **exists** ~~to~~ adopt all findings of fact and conclusions of law set forth within the recommended Initial **Decision** of ALJ Frank, copy **of which** is appended **hereto** and incorporated **herein by** reference. On *the* issue of **penalties** to be assessed, **we** adopt ALJ Frank's recommendation that a more than ample predicate exists upon **which to** order the revocation of respondent Noonan's license to **practice** medicine and surgery.\*\*

ALJ Frank **declined** to make a recommendation on **the** issue of the amount of costs and **penalties** to be assessed against respondent, instead returning the matter to the Board for said assessment. The Attorney General **subsequently** presented an affidavit from William V. Roeder, Executive Director of **the** Board, detailing that shorthand reporting costs and **expert** witness/consultant costs **incurred in** this matter totaled \$6,417.75; certifications of Supervising Investigator Michael **J. Westenberger** and Deborah Zuccarelli detailing that the total amount of investigative costs **incurred by** the Enforcement Bureau were \$4,043.30, and a certification of Deputy Attorney General Hakima Bey detailing total attorney's fees incurred in the prosecution of

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\*\* We note that ALJ Frank recommended that respondent **be** suspended from *the* practice of medicine and that respondent's license to practice **be** revoked. Given that a revocation is the most **serious** penalty that we can impose, and given that Dr. Noonan **will** be precluded from practicing medicine and surgery in the State of New Jersey upon **the** revocation of his license, we find it **unnecessary** to simultaneously order the suspension and the revocation of his license and instead simply order that Dr. Noonan's license be revoked.

**this** matter to be \$16,530. We find **the** costs that have been detailed within the **supporting** affidavits and certifications to **be** reasonable, particularly in light of the serious nature of the allegations and the important public interest **implicated** in this matter, and therefore assess all such costs (**an** aggregate total of \$26,991.05) against respondent Noonan.

Finally, **on** the **issue** of penalties **to be** assessed, we are of the opinion that **a** substantial **penalty** is warranted **in** this matter, both **because** **this is** a second offense by respondent (respondent had previously been **reprimanded** and assessed a civil penalty of \$2,500 by way of an Order entered in July 1992 for having failed to maintain medical records in a manner consistent with acceptable medical standards) and because the misconduct which occurred in this case was both egregious and widespread. N.J.S.A. 45:1-25(a) provides that the Board may assess a penalty **of** up to \$20,000 for a second and for **each** subsequent violation. **The** Attorney General suggests in her letter brief that **the** Board may assess **a penalty** of \$20,000 far each and every violation of regulation **or** statute found by ALJ Frank for each patient identified in the complaint; **we decline** to do so and instead conclude that a civil penalty of \$140,000 should **be** assessed against respondent Noonan, representing a penalty of \$10,000 for each of the fourteen patients upon which findings of misconduct were made by ALJ **Frank**. As ordered by ALJ Frank, the penalty and

costs assessments should be paid in full by respondent within 30 days of the date of entry of this Order.\*\*\*

WHEREFORE, it is on this 4<sup>th</sup> day of August 2004

ORDERED:

1. All proposed **findings** of fact and conclusions of law **set** forth within the recommended initial **decision** of ALJ Frank dated May 10, 2004, **are hereby adopted** by the **Board**.

2. **The** License of **respondent** Frank Noonan, M.D. to practice medicine and **surgery** in the State of New Jersey is **hereby** revoked.

3. **Respondent** Frank Noonan is hereby **assessed civil penalties** in an aggregate **amount** totaling \$140,000. Payment **shall be** made in full, by certified check or money order payable to the State of New Jersey to **be** forwarded to Mr. William Roeder,

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\*\*\* In the event respondent is unable, however, to make full payment of the **penalties and costs assessed** herein, he may make application to the Board to **make** payments pursuant to such payment **schedule** that the Board may, in its discretion, accept as reasonable, subject to the addition of interest at a rate consistent with that which would be **set** on a judgment by operation of N.J. Court Rule 4:42-11. Respondent shall be required to petition the Board to accept a payment schedule within 15 days of the date of entry of this Order. In the event respondent does not petition the Board to accept a payment schedule in said time period, all penalties and costs assessed herein shall be **payable** within 30 days of the date of entry of this Order. In the event respondent were to petition the Board to accept a payment schedule, but the Board were to thereafter reject the payment schedule: **proposed** as being insufficient, all penalties and costs assessed herein shall be payable within thirty days of the date on which notice **13** forwarded to respondent by the Board advising him that the Board has rejected his **proposed** payment schedule.